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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/128,289	08/03/98	BURKE	2041

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IM22/1121

EXAMINER
JUSKA, C

ART UNIT	PAPER NUMBER
1771	10

DATE MAILED: 11/21/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/128,289

Applicant(s)

Burke et al.

Examiner

Cheryl Juska

Group Art Unit

1771



☒ Responsive to communication(s) filed on Sep 5, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-8 and 10-17 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-8 and 10-17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Response to Remarks

1. Applicant has submitted Remarks, filed as Paper No. 9 on September 5, 2000. Claims 1-8 and 10-17 are pending. Applicant's arguments presented in said paper have been fully considered, but they are not persuasive.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 3, 4, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 702 929 issued to Kerr (EP Kerr) in view of US 5,968,631 issued to Kerr (Kerr '631), as set forth in section 4 of the last Office Action.

Applicant traverses said obviousness rejection by arguing that the present invention has a co-inventor in common with the primary reference, EP Kerr (Remarks, paragraph spanning pages 1 and 2 and first and second paragraphs, page 2). As such, Applicant asserts that it is not obvious to modify EP Kerr to meet the presently claimed heat shrinkage limitation when EP Kerr does not set forth any resolution of the disclosed problems solved by the critical claimed limitation. In response, it is argued that EP Kerr does not necessarily need to set forth a resolution to the presently disclosed problem. It is reasserted that the combination of the two

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Kerr references would have suggested to those of ordinary skill in the art the presently claimed invention. The Examiner reasserts that it would have been obvious to choose a suitable material for the nonwoven carrier as is taught by EP Kerr, wherein said suitable material prevents differential shrinkage between said carrier layer and the rubber backing of EP Kerr. Such practice of preventing differential shrinkage is standard practice in the art of lamination. Applicant is hereby given Official Notice of said practice. Therefore, Applicant's arguments have been found unpersuasive.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited EP Kerr patent in view of the cited Kerr '631, as applied to claim 1 above, and in further view of WO 96/38298 issued to Burke et al., for the reasons of record.

5. Claims 6, 7, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited EP Kerr patent in view of the cited Kerr '631, as applied to claims 1 and 11 above, and in further view of US Patent 4,820,566 issued to Heine et al., for the reasons of record.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as obvious over the cited EP Kerr patent, in view of Kerr '631, as applied to claim 1 above, for the reasons of record.

7. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited EP Kerr patent in view of the cited Kerr '631, as applied to claims 1 and 11 above, and in further view of the cited Heine patent and US Patent 5,906,877 issued to Popper et al., for the reasons of record.

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8. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited EP Kerr patent in view of the cited Kerr '631, as applied to claims 1 and 11 above, and in further view of US Patent 4,722,954 issued to Hallworth, for the reasons of record.

9. Applicant's traversal of the rejections of dependent claims 2, 5-8, 10, and 14-17 is based upon the same arguments presented in the traversal claim 1. Thus, said claims are maintained for the reasons of record.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to

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reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.


ELAINE COPENHEAVER
PRIMARY EXAMINER

cj 

November 19, 2000